CONCURRENCE IN SENATE AMENDMENTS
AB 1278 (Nazarian)
As Amended August 25, 2022
Majority vote

SUMMARY

Requires a physician and surgeon to provide their patient with a written or electronic notice informing them of the federal Centers for Medicare and Medicaid Services (CMS) Open Payments database at an initial office visit.

Senate Amendments
1) Strikes the requirement that physicians specifically disclose the source of a payment or transfer of value received from a drug or device company and instead generally requires all physicians to provide information regarding the Open Payments database.

2) Requires that the notice be provided at a patient's initial office visit.

3) Changes the required text of the notice to reflect that it is information generally provided and not specific to the patient's physician.

4) Provides that if a physician does not maintain electronic records, the physician shall include the notice pursuant to this section in the written records.

5) Beginning January 1, 2024, requires a physician and surgeon to conspicuously post the Open Payments database notice on their internet website, if they have one.

6) Makes additional technical and clarifying changes.

COMMENTS

The Physician Payments Sunshine Act (Act) is a federal law that was passed in 2010 as part of the Patient Protection and Affordable Care Act. The Act requires medical product manufacturers to disclose to the CMS any payments or other transfers of value made to physicians or teaching hospitals. The intention of the Act is to increase transparency regarding financial relationships between health care providers and pharmaceutical manufacturers.

Manufacturers are required to submit annual data on all payments and transfers of value made to physicians, who have 45 days to review the data and dispute errors before public release. CMS then publishes the data through its Open Payment Program website, which allows members of the public to search for physicians, teaching hospitals, or companies making payments by name, city, state, and specialty. The Open Payments database enables patients to see if their providers have received payment from the manufacturer of a drug or device that has been recommended as part of their treatment plan, which may ultimately inform their health care decisions.

In addition to allowing the public to search for specific payments and transfers of value, CMS makes its Open Payments data generally available to researchers. In 2016, four key research studies explored the association between industry payments and physician-prescribing patterns by cross-linking federal Open Payments data with national Medicare Part D prescribing information.
When examining general brand-name prescribing rates, one study found that physicians who received any industry payments had, on average, a brand-name prescribing rate two percentage points higher than physicians who did not receive any payments. A dose-response relationship was examined, meaning that as the payment amount increased, the difference in the brand-name prescribing rates of non-payment recipients and payment recipients increased. Another study analyzing 2013 Open Payments data found that even after adjusting for potential influencing factors, industry payments were associated with greater prescription costs per beneficiary. This was again a dose-response relationship, with greater payments associated with greater prescribing costs per patient. One study published in *JAMA Internal Medicine* in August 2016 found that receipt of meals costing as little as $20 were associated with higher relative prescribing rates.

This bill is intended to ensure that patients are informed of when their physician and surgeon has received some form of payment from the manufacturer of a drug or device intended to be prescribed or used in their treatment by requiring all physicians to provide their patients with information about the Open Payments database. The bill would increase consumer awareness of the Open Payments database so they may choose to search for any payments received by their physician prior to receiving care. The author believes that doing so will greatly increase the impact of the federal law in California and result in a better informed patient population.

**According to the Author**

"AB 1278 would empower patients with important information about their recommended medical treatment so that they can make informed choices about any treatment prescribed. When it comes down to it—patients deserve transparency and accountability when it comes to treatment. By requiring physicians and surgeons to engage patients as trusted partners in decision making, we are creating local accountability what will both serve the doctor and patients alike."

**Arguments in Support**

The Center for Public Interest Law (CPIL) is sponsoring this bill. According to CPIL, "disclosure of financial conflicts of interest by doctors is a moral obligation not enforced by law. AB 1278 would remedy this problem by mandating physician disclosure of any financial conflicts of interest to their patients, and empowering patients to make better and more informed choices about their treatment. Preceding any treatment, physicians would be required to explain their healthcare recommendation, the clinical evidence supporting it, as well as disclosing any financial ties they have to the drug or device manufacturer. The result would be strengthened trust between patients and doctors, as well as patients being fully apprised of information relevant to their care to aid them as they evaluate health care decisions."

**Arguments in Opposition**

The California Medical Association (CMA) opposes this bill, writing: "Unfortunately, AB 1278, as amended, would require physicians to provide patients with a written disclosure, informing them of identical information to that posted in the lobby, on an annual basis. CMA is supportive of the initial written disclosure, but the annual mandate puts undue burden on physicians to update their existing systems or create new ones. Without an annual mandate, patients would still be informed of the Open Payments Database via: 1) visual posting in every physician lobby, 2) notification on every physician website, 3) written disclosure requiring patient signature, upon patient visit to a physician office. The annual requirement, which would saddle physicians with exorbitant costs for recordkeeping and software updates, is extraordinary and unnecessary,"
considering the information shall be provided directly and then posted prominently for patients to see in perpetuity."

**FISCAL COMMENTS**

According to the Senate Appropriations Committee, indeterminate, but likely absorbable costs to the Medical Board (MBC) and Osteopathic Medical Board (OMB) to address a potential increase in enforcement workload related to a small increase in complaints; costs of $4,000 to create new enforcement codes, which is anticipated to be absorbed through the redirection of existing maintenance resources.

**VOTES:**

**ASM BUSINESS AND PROFESSIONS: 13-0-6**  
**YES:** Low, Arambula, Berman, Chiu, Gipson, Grayson, Holden, Irwin, McCarty, Medina, Mullin, Salas, Ting  
**ABS, ABST OR NV:** Flora, Bloom, Chen, Cunningham, Megan Dahle, Fong

**ASM APPROPRIATIONS: 12-0-4**  
**YES:** Lorena Gonzalez, Bloom, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Kalra, Levine, Nazarian, Quirk, Robert Rivas  
**ABS, ABST OR NV:** Bigelow, Megan Dahle, Davies, Fong

**ASSEMBLY FLOOR: 54-9-15**  
**NO:** Cunningham, Flora, Gray, Lackey, Mathis, Patterson, Seyarto, Smith, Voepel  
**ABS, ABST OR NV:** Bigelow, Chen, Choi, Cooper, Megan Dahle, Davies, Fong, Frazier, Gallagher, Kiley, Mayes, Nguyen, Quirk, Valladares, Waldron

**SENATE FLOOR: 21-4-15**  
**YES:** Allen, Atkins, Cortese, Dahle, Dodd, Durazo, Eggman, Gonzalez, Hurtado, Laird, Leyva, Limón, McGuire, Melendez, Min, Nielsen, Portantino, Roth, Skinner, Wieckowski, Wilk  
**NO:** Becker, Jones, Newman, Pan  
**ABS, ABST OR NV:** Archuleta, Bates, Borgeas, Bradford, Caballero, Glazer, Grove, Hertzberg, Hueso, Kamlager, Ochoa Bogh, Rubio, Stern, Umberg, Wiener

**UPDATED**

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